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In The
Supreme Court of the United States
October Term 1987

NORMA ARRIAGA-ZAYAS, *et al.*,

Petitioners,

v.

INTERNATIONAL LADIES GARMENT WORKERS' UNION, PUERTO RICO COUNCIL (LOCAL 600-601), and SPLENDORFORM INTERNATIONAL, INC.,

Respondents.

BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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May 6, 1988

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES. ii

BRIEF IN OPPOSITION 1

COUNTERSTATEMENT OF THE CASE . 2

REASONS FOR DENYING THE WRIT . 10

I. The lower courts applied settled principles to specific facts; the case poses no general issue. . 13

II. This case would in any event be inappropriate for review. 21

CONCLUSION 23

TABLE OF AUTHORITIES

Cases	Page
Adkins v. IUE, 769 F. 2d 330 (6th Cir. 1985) . . .	17
Clayton v. UAW, 451 U.S. 679 (1981)	19
DelCostello v. Teamsters, 462 U.S. 151 (1983) . . .	11,12, 21,22
Frandsen v. BRAC, 782 F. 2d 674 (7th Cir. 1986) . . .	20
Hayes v. Reynolds Metals Co., 585 F. Supp. 508 (N.D. Ala. 1984), rev'd, 769 F. 2d 1520 (11th Cir. 1985)	16,22
Proudfoot v. Seafarers, 779 F. 2d 1558 (11th Cir. 1986)	15-16
Santos v. Carpenters, 619 F. 2d 963 (2d Cir. 1980) . .	17-18
Statutes and Rules	
Labor Management Relations Act, 29 U.S.C. Sect. 159	2

No.

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NORMA ARRIAGA-ZAYAS et al.,
Petitioners,

-against-

INTERNATIONAL LADIES' GARMENT
)RKERS UNION, PUERTO RICO COUNCIL
(LOCAL 600-601), and
SPLENDORFORM INTERNATIONAL, INC.,
Respondents.

- - - - - - - - - -

BRIEF IN OPPOSITION
TO THE PETITION FOR CERTIORARI

- - - - - - - - - -

Respondent International
:s' Garment Workers Union, Puerto
Council (hereinafter the "Union")
:ctfully prays this Court to deny
'etition for a Writ of Certiora-
The case presents no significant
. issue; the courts below simply

applied settled legal principles to specific facts.

COUNTERSTATEMENT OF THE CASE[1/]

At all relevant times, Petitioners were employed by Respond-

1/ The opinions below, jurisdiction and relevant statutes are correctly set forth in the Petition, except that the cause of action against the Union derives from the Labor-Management Relations Act, 29 U.S.C. Section 159(a), which says in pertinent part:

> "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment."

ent Splendorform International, Inc. and represented for purposes of collective bargaining by the Union. The collective bargaining agreement provided that the employer could not have "work performed outside of its own shop unless the workers of its inside shop are fully supplied with work." (Article 16, Section 2.) However, the agreement also guaranteed to the employer "the right in good faith to discontinue, curtail and reorganize his factory." (Article 16, Section 3.)

In case of reorganization, the agreement required reduction in personnel "on the basis of seniority with due regard to the worker's ability to perform the work." Id. On October 22, 1984, Splendorform invoked this

section and reduced the work force at its Puerto Rico plant, laying off 85 to 90 employees including the Petitioners.

The Union questioned Splendorform's selection of employees for layoff; Splendorform maintained its selection was justified by workers' ability to perform the work. In December 1985, the Union submitted unresolved disputes about the selection of laid-off employees to arbitration; the Union and Splendorform subsequently settled these disputes and Splendorform paid damages to employees laid off out of seniority, as reflected in an arbitrator's award issued February 10, 1986. In addition to this grievance, the Union objected on March 12, 1985,

to continued operation of a Splendorform plant in the Dominican Republic after the Puerto Rico reduction in force, and in July 1985 the Union submitted this dispute to arbitration. The arbitrator heard the Union's claim and denied it in a decision dated April 8, 1986.

One year earlier, on March 21, 1985, Petitioners filed charges with the Puerto Rico Labor Relations Board against Splendorform and the Union, alleging that the selection of workers for layoff, and the sending of work to the Dominican Republic "before and since October 22, 1984," breached Article 16 of the collective bargaining agreement and the Union's duty of fair representation. On June

3, 1985, in support of the charges, Petitioners filed a detailed motion. The Board dismissed the charges on October 16, 1985 and denied review November 18, 1985. One of the Petitioners also filed a charge against the Union with the National Labor Relations Board, which dismissed it on November 29, 1985.

Petitioners filed the instant complaint on July 24, 1986, alleging that the Union breached its duty to them and Splendorform breached the labor agreement when Splendorform reduced its work force in October 1984. Specifically, the complaint alleged the Union knew that Splendorform sent work "a long time ago" to its Dominican plant, had

"enough time of anticipation" of the October 1984 reduction, and knew that the reduction and selection of employees for layoff breached the labor agreement. The complaint alleged the Union "didn't do anything to protect the plaintiffs' rights" but instead "agree[d] that the employer violate the collective bargaining agreement." The complaint said that "[b]ecause of this," plaintiffs filed charges with the Puerto Rico Labor Relations Board on March 21, 1985.

Respondents moved to dismiss and for summary judgment on statute of limitations grounds and the District Court for the District of Puerto Rico granted their motion, holding that "[w]hatever wrongdoing the Union may

have committed, in plaintiffs' view, was committed on or before March 21, 1985." Pet. 13a.

The Court of Appeals for the First Circuit unanimously affirmed, saying plaintiffs "plainly knew of the ILGWU's purported wrongdoing no later than June 3, 1985 -- for on that date they filed an elaborate 'informative motion' with the PRLRB" in which the Union's alleged transgressions were detailed. Pet. 4a. The court specifically noted that events subsequent to the Puerto Rico charge had no relation to the suit, since plaintiffs concededly challenged neither "the handling or the outcome of the arbitration hearings, or the fairness of the settlement reached

therein," but trained their guns solely "on the firings which occurred in October 1984 and on the sluggishness of the ILGWU's reaction thereto." Pet. 5a n. 2.

Thus, several statements in the Petition for a Writ of Certiorari are misleading. Most important, it is not true that "because their union had initiated grievances on their behalf, petitioners waited to file suit until after the grievance procedure had been completed." Pet. 3. On the contrary, the complaint showed and the courts below found Petitioners' case had no connection to the arbitration. Far from waiting to complain about Union inaction because the grievance procedure had not been completed,

Petitioners filed charges and a detailed statement about inaction alleged to have occurred before the October 1984 layoffs, with the Puerto Rico Labor Relations Board, in March and June of 1985.

REASONS FOR DENYING THE WRIT

To persuade this Court to issue a writ of certiorari, Petitioners claim this case presents an issue of general importance: whether the limitations period for breach of a collective bargaining agreement and the duty of fair representation should be tolled while contractual arbitration is completed. We show in Part I that the case poses neither this nor any other general legal

issue. The lower courts did not decide that arbitration cannot toll the limitations period; rather, they found the claim of these Petitioners unrelated to arbitration -- as Petitioners themselves had recognized in their complaint, at oral argument, and in charges filed with labor boards while the Union's grievances were pending. The lower courts' finding is specific to this case and does not conflict with any case or policy.

As Petitioners acknowledge, DelCostello v. Teamsters, 462 U.S. 151 (1983), established a six-month limitations period for hybrid duty of fair representation/breach of contract claims, including this one. Thus, the courts below were right to find

untimely a claim filed in July 1986 which was substantially identical to charges filed in March 1985. More significant, this narrow, factual finding, and not any new or disputed legal rule, formed the basis of the rulings by the courts below.

We show in Part II that even if the courts below had spoken generally of arbitration's intersection with the limitations period, this case would not be a good vehicle to address the question. The vagueness and obscurity of the record, especially Petitioners' untimely complaint itself, make this an inappropriate vehicle to clarify any questions DelCostello may not have resolved. On the specific question for which certiorari is sought -- but

which the record does not pose -- there is no likelihood of adversary presentation: no party and no opinion below held that arbitration cannot toll the limitations period in a proper case. Since it could not decide this issue on the record here, the Court should leave undisturbed conclusions with which no judge has disagreed.

I.

In attempting to extract some general significance from the decisions below, Petitioners overlook that throughout the proceedings in the lower courts Petitioners made clear they did not complain about anything linked to arbitration and did not delay action so arbitration could be

completed. Rather, the courts below correctly found that the case dealt solely with alleged transgressions before October 1984, the same alleged transgressions that prompted Petitioners' charges in March 1985. The district court expressly stated this, Pet. 13a, and the court of appeals did so as well, noting that at oral argument plaintiffs conceded what was already clear from their complaint. Pet. 5a n. 2.

Because the lower courts correctly understood Petitioners to have limited their claim, the decisions of those courts are necessarily equally limited. The courts did not hold that plaintiffs who doubt an arbitration will be fair

must sue without waiting for it to be completed. The courts said only that a complaint concededly having nothing to do with arbitration and already the subject of a labor board charge, may not be filed untimely simply because an arbitration is also brought. As the court of appeals put it, Petitioners had no right "to pin the tail of the arbitration proceedings onto their hybrid case in order to extend the applicable limitations period." Pet. 8a. Thus, Petitioners' argument against requiring suit before arbitrations are completed (Pet. 7-8), while perhaps correct, is completely unrelated to this case.

There is no conflict between the rulings below and Proudfoot v.

Seafarers, 779 F. 2d 1558 (11th Cir. 1986) or other cases cited at Pet. 8.2/ Those cases allowed tolling of a limitations period while plaintiffs sought a remedy through a grievance procedure; but they did not allow plaintiffs who never thought a contractual remedy existed to file untimely claims with no connection to

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2/ To bolster the claim that the issue of when the limitations period begins "is consuming substantial litigation resources in the lower federal courts" (Pet. 6), Petitioners imply Hayes v. Reynolds Metals Co., 585 F. Supp. 508 (N.D. Ala. 1984), also conflicts with cases like Proudfoot. Pet. 7, 10. Actually, the district court's ruling in Hayes was long ago reversed. 769 F. 2d 1520 (11th Cir. 1985). Despite Petitioners' argument, there is simply no conflict on this issue in the lower federal courts.

the arbitration. Thus, Adkins v. IUE, 769 F. 2d 330, 336 (6th Cir. 1985), cited by Petitioners, allowed tolling only "so long as plaintiffs were making a valid, timely, and nonfrivolous attempt to pursue their contractual remedies in reasonable good faith" -- a situation totally different from the one found here by the lower courts.

Santos v. Carpenters, 619 F. 2d 963, 969 (2d Cir. 1980), also cited by Petitioners, denies that the existence of "some possibility of nonjudicial enforcement" of plaintiffs' rights suffices to toll the limitations period, since this would "unduly extend the exposure to suit of the defendant union, which may ultimately

be found innocent." There is no conflict between such decisions and the lower courts' ruling here.

There is also no substance to Petitioners' claim that they were not excused from exhausting contract remedies, or in the alternative that "being excused from exhaustion is a far cry from being penalized for continuing to attempt to achieve vindication through the grievance procedure." Pet. 9. As the courts below correctly found, Petitioners were not attempting to achieve vindication through the grievance procedure. The actions of which Petitioners complain, which took place prior to the October 1984 layoffs, could not be remedied through a

grievance procedure. Thus the court of appeals cited Clayton v. UAW, 451 U.S. 679, 685 (1981), which said that "where an internal union appeals procedure cannot result in reactivation of the employee's grievance or an award of the complete relief sought in his Section 301 suit, exhaustion will not be required." Pet. 7a.

Petitioners did not try to exhaust the grievance procedure, but took action at the Puerto Rico board as early as March 1985. Until the Petition in this Court, Petitioners never so much as hinted their delay in suing had the least connection to a pending grievance. Since they were not pursuing contract remedies, the

untimely filing did not reflect a difficult choice between delaying to exhaust arbitration and facing possible dismissal of a suit brought prematurely. Petitioners' argument against the imposition of such a choice, while perhaps correct, has no application to this case. Similarly, Frandsen v. BRAC, 782 F. 2d 674, 681 (7th Cir. 1986), which held that a limitations period "is tolled by the pursuit of internal union remedies, even where those remedies are ultimately determined to have been futile," has no application and does not conflict with any rulings of the courts below.

II.

Even if this Court wished to address questions about the limitations period in hybrid duty of fair representation/breach of contract claims which DelCostello did not resolve, this case would be an inappropriate vehicle for doing so. The complaint in this case, though clearly focused on alleged wrongdoing before the October 1984 layoffs, is obscure in other ways. Before the Petition for Certiorari, Petitioners did not assert that concern about pending arbitration had anything to do with their delay in suing; as shown above, the lower courts decided the case on an opposite belief which Petitioners acknowledged was correct.

The lower federal courts appear to have had no difficulty applying DelCostello without impinging on either contractual arbitration or workers' rights. Hayes v. Reynolds Metals Co., 585 F. Supp. 508 (N.D. Ala. 1984), the single decision Petitioners cite which required suit during the pendency of a relevant arbitration, was promptly reversed by the circuit court, 769 F. 2d 1520 (11th Cir. 1985), and there is no need to review the issue of when a limitations period is tolled by arbitration.

However, if a conflict ever does arise and this Court decides to address the issue, it should do so in a case whose record includes genuine

allegations that arbitration was causally connected to delay, and disagreement about the issue by the parties and in the lower courts. Neither is present here.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

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